

REMARKS

Applicants respectfully request reconsideration of the above referenced patent application in view of the amendments and remarks set forth herein, and respectfully request that the Examiner withdraw all rejections. No claims have been amended. Claims 14 and 24 have been canceled without prejudice. No claims have been added. Thus, claims 12, 13, 16-20, 22, 23 and 26-30 are pending.

REJECTIONS UNDER 35 U.S.C. §101

Claims 22-24 and 26-30

These claims are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claim 24 is canceled herein, rendering moot the above rejection as applied thereto. For at least the following reasons, Applicants traverse the above rejection as applied to pending claims 22, 23 and 26-30.

In rejecting the above claims, the Final Office Action on page 2, lines 13-16 alleges in part (emphasis added):

“The broadest reasonable interpretation of a claim drawn to computer readable medium (also called **machine readable medium** and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se*...”

However, independent claim 22 does not recite “machine readable medium”, as is implied in the above-cited passage of the claim rejection.

Rather, independent claim 22 and its dependent claims each recite a “machine-readable **storage medium**” (emphasis added). All things being equal, a claim to a “machine readable **storage medium**” is narrower than a claim to a mere “machine readable medium”. Applicants submit that claim 22 and its dependent claims are limited to statutory subject matter at least insofar as a storage medium is to be distinguished both from a propagation medium and from any propagated signal which may propagate in such a propagation medium.

Per MPEP § 2111, the Office is not permitted to read limitations from the Specification into the claims. Additionally, when considering the patentability of claims, the Office must give the broadest reasonable interpretation of those claims.

However, the Office Action interprets Applicants' claimed "machine-readable storage medium storing a set of instructions" as reading on a propagating signal. Such an interpretation is contrary to established case law. Per the Federal Circuit in *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007), propagated signals or energy waves are incapable of storing, and thus are not patentable subject matter. Applicants' claims are explicitly directed to a storage medium, and thus cannot be reasonably interpreted as directed to non-patentable non-storage media.

Additionally, the justification of the Office of interpreting claims directed to "machine-readable storage medium" as covering signals because of disclosure in Applicants' Specification is the result of improperly reading limitations from the Specification into the claims. While the claims are interpreted in light of the Specification, Applicants' claims are explicitly directed to some of the described subject matter, without being directed to energy waves.

Therefore, according to established case law, the broadest reasonable interpretation of Applicants' claims is directed to storage media and not signals *per se*. The fact that Applicants' Specification may also include a description of non-storage media is immaterial to the patentability of Applicants' claims, given that the claims are expressly directed to storage media, which excludes signals. Therefore, the rejection of these claims as directed to non-patentable subject matter is improper, and Applicants respectfully request that the 35 U.S.C. §101 rejection of claims 22, 23 and 26-30 be withdrawn.

REJECTIONS UNDER 35 U.S.C. §112

Claims 14 and 24 – 35 U.S.C. §112, ¶1

These claims are rejected under 35 U.S.C. §112, ¶1 for allegedly failing to meet the written description and enablement requirements. Claims 14 and 24 are canceled

herein, rendering moot the above rejection. Therefore, Applicants respectfully request that the 35 U.S.C. §112, ¶1 rejection of claims 14 and 24 be withdrawn.

REJECTIONS UNDER 35 U.S.C. §102

Claims 12-14 and 22-24

These claims are rejected under 35 U.S.C. §102(b) as allegedly being unpatentable over Baffes et al., US Pat. No. 6,292,792 (hereinafter “*Baffes*”). Claims 14 and 24 are canceled herein, rendering moot the above rejection as applied thereto. For at least the following reasons, Applicants traverse the above rejection as applied to claims 12, 13, 22 and 23.

Applicants respectfully submit that each of the above rejected claims is not anticipated by *Baffes*, based at least on the failure of the reference to disclose (emphasis added):

“...storing in a computer device sets of allocation data, wherein **each of the sets of allocation data corresponds to a different respective function in a set of functions** of an authoring tool, wherein **each of the sets of allocation data includes allocation settings which each correspond to a different respective one of an instructional design role and a content definition role**, wherein the instructional design role and the content definition role are each for a user to assume with respect to the authoring tool, **each of the allocation settings specifying a respective ability to customize an allocation of the function which corresponds to the set of allocation data to the role which corresponds to the allocation setting;...**”

as variously recited in current independent claims 12 and 22.

Explanation of the Baffes reference

Baffes relates generally to a dynamic knowledge delivery software program 100 for creating tutorials, the dynamic knowledge delivery software program 100 including a configuration editor program 110 which has a concept editor 16 and a pedagogy editor 20. See, e.g. *Baffes*, FIGS. 1 and 2 and col. 6, lines 50-59.

In *Baffes*, an author interacts with the concept editor 16 to call a “modify concept” function (or a “create concept” function) in order to create (or modify) a concept in a

concept database, the concept to be conveyed to a user receiving instruction through the tutorial. See, e.g. *Baffes*, FIG. 31 Abstract, col. 21, lines 29-58 and col. 5, lines 45-47.

The author in *Baffes* also interacts with the pedagogy editor 20 to call various functions to access a pedagogy in a storage location, the pedagogy being the manner in which the information is to be displayed to the user (i.e., how the instruction will be performed). See, e.g. *Baffes* FIG. 36, col. 23, lines 35-65 and col. 5, lines 48-50.

Failure of the Baffes reference to teach the claimed sets of allocation data

The claim rejection cites to the author's interactions with the concept editor and pedagogy editor in *Baffes* as allegedly teaching the variously claimed multiple sets of allocation data. Accordingly, the claim rejection alleges that, somehow, the author's interactions with the concept editor and pedagogy editor in *Baffes* explicitly or inherently teach:

- (1) A first set of allocation data which corresponds to a first function of the dynamic knowledge delivery software program 100, where the first set of allocation data includes a first allocation setting for concept editor 16 and a first allocation setting for pedagogy editor 20
- (2) A second set of allocation data which corresponds to a second function of the dynamic knowledge delivery software program 100, where the second set of allocation data includes a second allocation setting for concept editor 16 and a second allocation setting for pedagogy editor 20
- (3) That each of the allocation settings (e.g. the first allocation setting for concept editor 16, the first allocation setting for pedagogy editor 20, the second allocation setting for concept editor 16 and the second allocation setting for pedagogy editor 20) specifies a respective ability to customize an allocation of the function which corresponds to the set of allocation data to the role which corresponds to the allocation setting

However, the Final Office Action fails to provide any clear explanation as to how *Baffes* might be interpreted as explicitly or inherently teaching such multiple sets of allocation data. Moreover, *Baffes* fails to provide support for any such teaching, as demonstrated in the discussion below.

Baffes does mention that the concept editor (or pedagogy editor) includes various functions to modify, create or otherwise access a concept (or pedagogy). However, the

relied-upon passages of *Baffes* **fail to include any additional discussion related to such functions.**

More particularly, *Baffes* is completely silent as to whether or how the modify concept function, create concept function, and/or the various pedagogy functions might each correspond to a respective set of allocation data **of some multiple sets of allocation data.**

Necessarily then, *Baffes* must also fail to more particularly disclose whether or how each one of any such multiple sets of allocation data might include multiple allocation settings, where **each allocation setting corresponds to a different respective one** of an instructional design role and a content definition role.

Accordingly, *Baffes* must also fail to more particularly disclose whether or how any such allocation settings might **each specify a respective ability to customize an allocation of the function** which corresponds to the set of allocation data to the role which corresponds to the allocation setting.

By contrast, current independent claims 12 and 22 variously recite multiple sets of allocation data which each correspond to a different respective function in a set of functions of an authoring tool, wherein each of the multiple sets of allocation data includes allocation settings which each correspond to a different respective one of an instructional design role and a content definition role, **each of the allocation settings specifying a respective ability to customize an allocation of the function** which corresponds to the set of allocation data **to the role** which corresponds to the allocation setting. Even assuming *arguendo* that all other limitations are anticipated by *Baffes*, which Applicants do not agree, the reference nevertheless fails to either expressly or inherently disclose at least one limitation of Applicants' invention in as complete detail as set forth in the claims, as required by M.P.E.P. §2131.

For at least the foregoing reasons, *Baffes* fails to anticipate each of independent claims 12 and 22, and any claims depending therefrom. Therefore, Applicants request that the above 35 U.S.C. §102(b) rejection of claims 12, 13, 22 and 23 based on *Baffes* be withdrawn.

Failure to clearly explain the basis of claim rejection

In rejecting independent claims 12 and 22, the Final Office Action (page 4, line 15 to page 5, line 10) makes only the following brief citations to *Baffes*:

‘(see col. 21:60-40)’
‘(see FIG 30 col. 21:30-45)’
‘(see FIG 36 col. 23-45065)’
‘(see col. 17:5-20)’
‘(see col. 21:45-50)’
‘(see FIG 29 col. “concept editor” and “pedagogy editor”)’
‘(see col. 18:19-30)’
‘(see col. 23:35-45)’

without providing any additional explanation to clearly set forth how such citations might be interpreted as teaching the claim limitations for which they are offered.

More particularly, the Final Office Action fails to clearly explain what in *Baffes* is interpreted as expressly or inherently teaching multiple sets of allocation data. Nor does the Final Office Action clearly explain how each of any such multiple sets of allocation data might correspond to a different respective function in a set of functions of an authoring tool.

Even assuming *arguendo* that *Baffes* teaches such multiple sets of allocation data, which Applicants do not agree, the Final Office Action fails to clearly explain what in *Baffes* is interpreted as expressly or inherently teaching that each of such multiple sets of allocation data includes **multiple allocation settings**, where the allocation settings **each correspond to a different respective one** of an instructional design role and a content definition role.

Absent any such clear explanation, Applicants are left to guess as to how, for example, a concept editor function (pedagogy editor function) of *Baffes* might inherently correspond to a particular one of multiple sets of allocation data, where that particular set of allocation data inherently includes an allocation setting which corresponds to the pedagogy editor (concept editor).

Even assuming *arguendo* that *Baffes* teaches such allocation settings in each of multiple sets of allocation data, which Applicants do not agree, the Final Office Action

fails to clearly explain what in *Baffes* is interpreted as expressly or inherently teaching that each of such allocation settings specifies a respective ability to customize an allocation of a function which corresponds to the set of allocation data to the role which corresponds to the allocation setting.

In alleging that *Baffes* teaches allocation settings specifying respective abilities to customize an allocation of a function, the Final Office Action (page 4, lines 22-23) only provides the following terse citation to *Baffes*:

“(see col. 17:5-20)”

without any clarifying explanation in support of such a citation.

However, the relied-upon *Baffes*, col. 17, lines 5-20 does not even relate to either the concept editor or the pedagogy editor in *Baffes*. Rather, *Baffes*, col. 17, lines 5-20 discusses an entirely different feature – i.e. a user model data structure 106 used to store information about the user receiving instruction through a tutorial.

Therefore, the claim rejection violates M.P.E.P. §706 and 37 C.F.R. §1.104(c)(2), which each state in salient part (emphasis added):

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. **When a reference is complex or shows or describes inventions other than that claimed** by the applicant, the particular part relied on must be **designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained** and each rejected claim specified.”

For at least the foregoing reasons, the claim rejection is improper for failing to clearly explain the alleged basis of rejection. Therefore, Applicants request that the above 35 U.S.C. §102(b) rejection of claims 12, 13, 22 and 23 based on *Baffes* be withdrawn.

REJECTIONS UNDER 35 U.S.C. §103

Claims 16-20 and 26-30

These claims are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Baffes* in view of Hekmatpour, US Pat No 5,644,686 (hereinafter

“*Hekmatpour*”). For at least the following reasons, Applicants traverse the above rejection.

As demonstrated in the discussion above, there is at least one limitation in each of current independent claims 12 and 22 which is not taught or suggested by *Baffes*. *Hekmatpour*, which is generally related to consistent windowing structures for displaying information (see, e.g. *Hekmatpour* FIG. 15 and col. 22, lines 10-30), does not cure the failure of *Baffes* to teach allocation settings which each correspond to a different respective one of an instructional design role and a content definition role, each of the allocation settings specifying a respective ability to customize an allocation of a function which corresponds to a set of allocation data to the role which corresponds to the allocation setting.

Accordingly, each of independent claims 12 and 22 is non-obvious in light of *Baffes* and *Hekmatpour*, as are any claims depending therefrom. For at least the foregoing reasons, Applicants request that the above 35 U.S.C. §103(a) rejection of claims 16-20 and 26-30 based on *Baffes* and *Hekmatpour* be withdrawn.

CONCLUSION

For at least the foregoing reasons, Applicants submit that all pending objections and/or rejections have been overcome. Therefore, all pending claims are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: October 7, 2010

/Dermot G. Miller/
Dermot G. Miller
Attorney for Applicants
Reg. No. 58,309

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(503) 439-8778